STATE OF MICHIGAN

MICHIGAN SUPREME COURT

TAMIKA HARRELL,

Plaintiff-Appellee,

-vs-

TITAN INSURANCE COMPANY,

Defendant-Appellant.

SUPREME COURT NO.: 151134

COURT OF APPEALS NO.: 318744

LOWER COURT NO.: 12-003939-NF

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DEFENDANT-APPELLANT TITAN INSURANCE COMPANY'S SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

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On March 3, 2015, Defendant-Appellant Titan Insurance Company (hereinafter "Defendant" or "Titan") filed an Application for Leave to Appeal from the Court of Appeals' Opinion and Order dated January 20, 2015, which had affirmed the decision of the Wayne County Circuit Court to deny Titan's Motion for Summary Disposition. In addition, the Court of Appeals' Opinion and Order also affirmed the lower court's Findings of Fact and Conclusions of Law, following a bench trial that took place on August 21, 2013. Essentially, the Court of Appeals and the Wayne County Circuit Court had determined that despite Plaintiff-Appellee Tamika Harrell's "periodic" use of her husband's uninsured motor vehicle over the course of 2½ years, she did not "have the use" of her husband's uninsured motor vehicle for a period of time greater than 30 days. Therefore, according to the lower courts, Plaintiff-Appellee Tamika Harrell (hereinafter "Plaintiff" or "Harrell") would not be considered an "owner" of her husband's uninsured motor vehicle as that term is defined in MCL 500.3101(2)(k)(i) and, as a result, she was not disqualified from recovering no-fault benefits under MCL 500.3113(b).

On September 23, 2015, this Court granted "mini oral argument" on Titan's Application for Leave to Appeal and, in doing so, stated:

> "The parties shall file supplemental briefs within 42 days of the date of this Order addressing whether the Plaintiff, who was driving an uninsured motor vehicle titled in the name of her husband, is an 'owner' under MCL 500.3101(2)(k)(i). The parties should not submit mere restatements of their application papers."

Accordingly, Titan now submits the following Supplemental Brief in Support of its Application for Leave to Appeal for this Court's further consideration.

LEGAL ARGUMENT

I. Applying the Dictionary Definition of the Noun Form of the Word "Use," Plaintiff Clearly Qualified as an "Owner" of her Husband's Uninsured Motor Vehicle, Thereby Disqualifying Her from Recovering No-Fault Benefits Under MCL 500.3113(b).

As this Court is well aware, the term "owner" is specifically defined in the No-Fault Insurance Act. In fact, there are three separate categories of individuals who could be deemed "owners" of motor vehicles, for purposes of the No-Fault Act. See MCL 500.3101(2)(k). For purposes of this case, though, we are only dealing with one specific category:

> "(k) 'Owner' means any of the following:
>
> (i) A person renting a motor vehicle or **having the use of a motor vehicle**, under a lease or otherwise, for a period that is greater than 30 days."

Because the No-Fault Act provides a specific definition of the term "owner," that term must be applied as expressly defined in the state. *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 136, 545 NW2d 642 (1991); *Mikelonis v Alabaster Twp*, 307 Mich App 606, 861 NW2d 354 (2014); *Cherry Growers Inc v Agricultural Mktg and Bargaining Bd*, 240 Mich App 153, 169, 610 NW2d 613 (2000).

However, the Michigan No-Fault Act does not define the term "use," in its noun form as utilized in the No-Fault Insurance Act. If the term used in the statute is undefined, a Court may look to a dictionary definition for assistance in interpreting and defining the word. *Klooster v City of Charlevoix*, 488 Mich 289, 304, 795 NW2d 578 (2011); *Spartan Stores v City of Grand Rapids*, 307 Mich App 565, 861 NW2d 347 (2014). In fact, a survey of numerous dictionary definitions demonstrates, beyond any doubt, that Plaintiff-Appellee Tamika Harrell undoubtedly qualifies as a person "having the use" of her husband's uninsured motor vehicle for a period of time greater than 30 days, thereby rendering her an "owner" of that vehicle.

Black's Law Dictionary, abridged 6th Ed. defines the noun form of the word "use" as:

> "Act of employing everything, or state of being employed; that enjoyment of property which consists in its employment, occupation, exercise or practice."

Although Titan is aware that legal dictionaries, as opposed to a law dictionary, should be used only where the terms under discussion have a "unique legal meaning" (see *People v Thompson*, 477 Mich 146, 151-152, 730 NW2d 708 (2007)), the lay dictionary definition of the noun "use" is not much different that the law dictionary definitions of that same term.

For example, Webster's II New College Dictionary (2001) defines the noun form of the word "use" as follows:

> "The act of using or putting to a purpose < the *use* of a car >
>
> The condition or fact of being used
>
> The manner or benefit of using something < have *use* of the library >
>
> The power or ability to use something < lost the *use* of one arm >"

The Merriam-Webster On-Line Dictionary defines the noun form of the word "use" in the following manner:

> "1. The act or practicing of employing something;
>
> 2. A method or manner of employing or applying something;
>
> 3. The privilege or benefit of using something;
>
> 4. The legal enjoyment of property that consists in its employment, occupation, exercise or practice."

Finally, the on-line site Dictionary.com defines the noun form of the word "use" as:

> "1. The act of employing, using or putting into service;
>
> 2. The state of being used or employed;
>
> 3. An instance or way of employing or using something;
>
> 4. Power, right, or privilege of employing or using something."

With these dictionary definitions in mind, there is no doubt but that Plaintiff repeatedly engaged in the act of "employing" her husband's uninsured motor vehicle, or "putting into service" or "putting to a purpose" her husband's uninsured motor vehicle, for a period of time greater than 30 days. As such, utilizing the dictionary definition of the noun form of the word "use," Harrell clearly qualifies as an "owner" of her husband's uninsured motor vehicle.

Again, Plaintiff's husband, Arville Livingston, had had possession of the 2008 Lincoln MKX since he purchased it new in 2008. (TR 8/21/2013, pps 6; 35) The vehicle had been in the household for 2½ years from the date of purchase to the date of the subject motor vehicle accident of June 17, 2011. From December 19, 2008, through June 2011, Harrell managed to receive no less than seven different traffic citations from various jurisdictions – all while operating her husband's 2008 Lincoln. See Trial Exhibits E-J, as well as TR 8/21/2013, p 13. These citations were issued based on her failure to display a valid driver's license and, more importantly, **no proof of insurance**. Thus, it can reasonably be inferred that she was well aware of the obligation, on the part of her and her husband, to insure that vehicle. With regard to her actual patterns of use, she testified that she used it on average of once per week and sometimes even more, and both Plaintiff and her husband acknowledged that she had used the vehicle for at least 24 days, and possibly more, from January 1, 2011, through June 17, 2011. (TR 8/21/2013, pp 20; 48.) In fact, she continued to drive the subject vehicle, even after the loss occurred. Her actual patterns of usage coincide with her undoubted "right to use" the vehicle, as this Court enunciated in *Twichel v MIC Gen'l Ins Corp*, 469 Mich 524, 676 NW2d 616 (2004).

After giving proper definition to the noun form of the word "use," it is readily apparent that the Court of Appeals erred when it engrafted the qualifying terms "proprietary" or "possessory" use onto the phrase actually adopted by the legislature – "having the use," in *Ardt v*

Titan Ins Co, 233 Mich App 685, 593 NW2d 215 (1999). The Court of Appeals further compounded the error in *Detroit Med Ctr v Titan Ins Co*, 284 Mich App 490, 775 NW2d 151 (2009), when it arguably engrafted a "regular" or "exclusive" use requirement onto the statutory language of MCL 500.3101(2)(k)(i). The error was compounded yet again by the Court of Appeals, in this case, when it arguably amended the statutory definition of the term "owner" to **limit** the universe of potential owners to only those persons "having the continuous use" of a vehicle for more than 30 days. See *Harrell v Titan Ins Co*, slip opinion at page 3.

Each of these statutory engraftments does violence to the actual statutory language adopted by the legislature, which, as noted above and in Titan's Application for Leave to Appeal, was actually designed to **broaden** the universe of individuals who could be considered "owners" of motor vehicles. Interpreting the phrase "having the use of a motor vehicle" in the manner suggested by Defendant, and in a manner consistent with the Legislative intent, furthers the cost containment goals that have been recognized by this Court on numerous occasions. See *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 539, 697 NW2d 895 (2005); *Shavers v Attorney General*, 402 Mich 554, 607-611, 267 NW2d 72 (1978) ("In choosing to make no-fault insurance compulsory for all motorists, the Legislature has made the registration and operation of a motor vehicle inexorably dependent on whether no-fault insurance is available at fair and equitable rates.") Simply stated, the statutory provisions must be applied "to prevent users of motor vehicles from obtaining the benefits of personal protection insurance without carrying their own insurance through the expedient of keeping title in the names of family members." See *Ardt*, 593 NW2d @ 218. Users of motor vehicles must have an incentive to make sure the vehicles they use on a long term basis are properly insured, and applying the exclusion set forth in MCL 500.3113(b) certainly enhances this incentive. Unfortunately, the Court of Appeals'

decisions in *Ardt*, *Detroit Med Ctr* and in this case allow users of motor vehicles, owned by family members, to recover benefits even though no premium dollars have been paid for the coverage. Instead, policyholders of this state essentially pay the benefits. In this particular case, if the Court of Appeals' decision is allowed to stand, the policyholders of this state who fund the Michigan Assigned Claims Plan will pay $75,000.00 to Plaintiff in a case where she obviously 'had the use" of her husband's automobile, and extensive use as well, as manifested by the 7 traffic citations she received in 2½ years, and her admitted "periodic" use of the vehicle. It is incumbent upon this Court to clarify precisely what it means for one to "have the use" of a motor vehicle, consistent with the dictionary definition of the term "use." Properly applied, it leads to only one inescapable conclusion – Plaintiff qualifies as an "owner" of a motor vehicle as she undoubtedly is a person "having the use" of her husband's uninsured motor vehicle for more than 30 days.

II. Case Law Interpreting the Motor Vehicle Code Definition of the Term "Owner," as Set Forth in MCL 257.37(a) Indicates that the Purpose Behind the 30-Day Limitation Period Set Forth in Both the Motor Vehicle Code and the No-Fault Insurance Act is to Preclude a Finding a Ownership in Cases Involving Short-Term Use of a Motor Vehicle, and it Was Not Intended to Preclude a Finding of Ownership in Cases Where a Vehicle Has Been in the Household, Available for One's Use, for an Extended Period of Time.

As noted in Titan's Application for Leave to Appeal, the No-Fault Insurance Act did not have its own definition of the term "owner" until 1988. However, the Motor Vehicle Code's definition of the term "owner," pertaining to the 30-day use period, can be traced back to at least 1909. See 1909 PA 318; *Daugherty v Thomas*, 174 Mich 371, 140 NW 615 (1913). In its Application for Leave to Appeal, Defendant points out that the Motor Vehicle Code's definition of the term "owner" includes those individuals "having the exclusive use thereof," whereas "such terminology is conspicuously absent" in the No-Fault Insurance Act's definition of that same term. *Devries v Citizens Ins Co*, Court of Appeals docket no. 200407, unpublished decision rel'd 1/6/1998. However, in *Auto-Owners v Hoadley*, 201 Mich App 555, 506 NW 2d 595 (1993), the Court of Appeals acknowledged that "while reference to the Vehicle Code may be used to clarify the meaning of a term used in the No-Fault Act, it cannot be used to change the meaning of a term specifically defined in the No-Fault Act." *Id*, 506 NW2d at 598. Therefore, when one examines some of the case law interpreting the provisions of MCL 257.37(a), it becomes apparent that the purpose behind the "30 day use" statute is to broaden the universe of those who might be considered "owners" who to include those who either have a "right to use" the vehicle (whether exclusively for purposes of the Motor Vehicle Code, or otherwise for purposes of the No-Fault Insurance Act, and whether exercised or not), or those individuals who have access to a motor vehicle for a period of time greater than 30 days.

This concept was enunciated by this Court in *Ketola v Frost*, 375 Mich 266, 134 NW2d 183 (1965). In that case, Defendant Frost was hauling a shipment of freight for Allied Van Lines. He had detached his trailer at his residence in Sault Sainte Marie, and was driving the tractor on personal business. He was involved in a motor vehicle accident in which Plaintiff's decedent was killed. Defendant Frost had entered into a lease agreement with Allied Van Lines, but the evidence produced at trial showed that at no time did Allied Van Lines have "exclusive possession of the leased equipment." After reviewing the terms of the lease agreement, this Court had no difficulty interpreting the phrase "having the exclusive use" in a manner consistent the reality of the circumstances at issue – Allied Van Lines had a "right to exclusive use" of the equipment for more than 30 days, even if it never exercised that right.

Relying on this Court's decision in *Ketola, supra*, the Court of Appeals determined that an automobile junkyard still maintained "ownership" over a vehicle even though the automobile junkyard never used the vehicle, and did not have title to the vehicle. In *Security Ins Co of Hartford v Daniels*, 70 Mich App 100, 245 NW2d 418 (1976), a vehicle that had been left abandoned in Monroe County had been taken to an automobile salvage yard. The salvage yard never obtained title to the vehicle, which had last been registered in the State of Illinois. The vehicle sat in the salvage yard from November 1970 until July 1971, when possession was transferred to the owner of a radiator shop. In September 1971, the owner of the radiator shop was involved in a motor vehicle accident. Relying on this Court's decision in *Ketola, supra*, the Court of Appeals had no difficulty concluding that because the salvage yard had the right to exclusive use of the abandoned vehicle between November 1970 and July 1971, it was an "owner" of the vehicle and, due to defects in the title transfer, the salvage yard remained the "owner" of the vehicle at the time of the subject motor vehicle accident.

Relying on this line of cases, the Michigan Court of Appeals in *Ringewold v Bos*, 200 Mich App 131, 503 NW2d 716 (1991) held that the purpose behind MCL 257.37(a) was to preclude a finding of ownership where an individual's right to exclusive use of a vehicle would not exceed 30 days. **The Court of Appeals' decision in *Ringewold* was expressly affirmed by this Court in *Twichel v MIC Gen'l Ins Corp*, 469 Mich 524, 676 NW2d 616 (2004).** In *Ringewold*, Defendant had obtained a motor vehicle from her former husband 15 days before the accident occurred. Her former husband, in turn, had purchased the automobile from a person at a repair shop for $250.00. Title was never transferred into her name. She claimed that she was not an "owner" of the vehicle because she did not have it in her possession for more than 30 days, and therefore did not have the "exclusive use" of that vehicle for the requisite period of time. Again, the Court of Appeals rejected this argument and noted that "we agree with the trial court's statement that the provision is intended to preclude a finding of ownership where a person's right to exclusive use of the vehicle will not exceed 30 days . . ." *Ringewold*, 503 NW2d at 760.

An example of a situation where a person would not be deemed an "owner" of a motor vehicle, under either definition of the term "owner" found in the Motor Vehicle Code or in the No-Fault Insurance Act is a case involving a rental car. Rental car contracts typically run for less than 30 days.[1] In those cases, the legislature obviously took great pains to exempt those people who are using rental vehicles from being considered "owners" of those vehicles, for reasons based on sound public policy.[2] See *Fuller v GEICO Indemnity Co*, 309 Mich App 495, ___NW2d ___ (2015) (person occupying rental vehicle not eligible for no-fault benefits from

[1] For example, rental contracts are frequently entered into by persons flying into the State of Michigan from out-of-state, or while their primary motor vehicle is being repaired.

[2] For example, if a person rents a vehicle from a rental car company, only to discover that the vehicle is not insured as required by law, the renter will not be disqualified from recovering no-fault benefits under MCL 500.3113(b).

renter's personal insurer under MCL 500.3114(4) as renter only had one week rental contract; as a result, renter's personal insurer was not "the insurer of the owner . . . of the vehicle occupied" by the injured Claimant.)

By contrast, in the case under consideration, we have a motor vehicle that had been in Plaintiff's household for approximately 2½ years prior to her involvement in the subject motor vehicle accident. Certainly, a person renting a vehicle under a short-term lease should not be expected to inquire as to whether or not the vehicle is insured before taking it out onto the road. In those situations, the individual has a right to assume that the person he or she is renting the car from has properly insured the vehicle as required by law and, in the event the individual's assumption is incorrect, no penalties will apply. By contrast, we have, in this case, a husband and wife situation, and it should follow that those individuals who are using another family member's automobile ought to inquire about its insurance status. By conspicuously omitting the term "exclusive" from the definition in the No-Fault Insurance Act, even though the legislature is presumed to have been aware of the fact that the Motor Vehicle Code had used that phrase since at least 1909, it goes without saying that the legislature intended to broaden the universe of those individuals who could conceivably be deemed "owners" of motor vehicles, for purposes of the No-Fault Insurance Act. Whether manifested by Harrell's "actual patterns of usage" (see *Ardt, supra*) or her having the right to the use of her husband's motor vehicle, by virtue of their marital relationship, the result remains the same. Plaintiff-Appellee Tamika Harrell is undoubtedly an "owner" of her husband's uninsured motor vehicle, pursuant to MCL 500.3101(2)(k)(i). As a result, she is precluded from recovering no-fault benefits under MCL 500.3113(b), and both lower courts erred when they concluded otherwise.

WHEREFORE, Defendant-Appellant Titan Insurance Company respectfully requests that, after hearing "mini oral argument" on its Application for Leave to Appeal, this Court enter an Order reversing the decisions of the Michigan Court of Appeals and of the Wayne County Circuit Court and remanding this matter back to the Wayne County Circuit Court with instructions to enter an Order Granting Titan's Motion for Summary Disposition. Alternatively, Defendant requests that this honorable Court take whatever other action it may deemed warranted in order to effectuate the legislative intent behind the plain language of MCL 500.3101(2)(k)(i), consistent with the plain language of the statute, without the added judicial gloss of "proprietary use," "possessory use," "regular use," "exclusive use" or "continuous use."

Respectfully Submitted,

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Dated: 11/4/2015

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PROOF OF SERVICE

Kelly A. Curry, being sworn, states that on November 4, 2015, she served copies of Defendant-Appellant Titan Insurance Company's Supplemental Brief in Support of its Application for Leave to Appeal on Bernstein & Bernstein P.C., Thomas P. Calcatera (P30326), Mark M. Grayell (P37069), Attorneys For Plaintiff, 18831 West 12 Mile Road, Lathrup Village, Michigan 48076, via the TrueFiling e-file system utilized by the Michigan Supreme Court.

/s/ Kelly A Curry
Kelly A. Curry